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In The Supreme Court Of The United States

ILLINOIS

Petitioner,

v.

ROBERT S. LIDSTER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF OF OHIO AND 13 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether *Indianapolis v. Edmond*, 531 U.S. 32 (2000), prohibits police officers from conducting a checkpoint organized to investigate a prior offense, at which checkpoint law enforcement officers briefly stopped all oncoming motorists to hand out flyers about—and look for witnesses to—the offense, where the checkpoint was conducted exactly one week after—and at approximately the same time of day as—the offense, and where the checkpoint otherwise met the reasonableness standard articulated in *Brown v. Texas*, 443 U.S. 47 (1979).

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

STATEMENT OF AMICI INTEREST AND SUMMARY OF ARGUMENT 1

REASONS FOR GRANTING THE WRIT 5

A. Two state supreme courts have split on the question presented, and the issue is both clearly drawn and important enough to merit immediate consideration 5

B. Extending *Edmond* to cover checkpoints reasonably tailored to advance the investigation of a known offense needlessly constricts officers' opportunity to obtain valuable information from drivers and their passengers 7

C. A rule that generally permits checkpoints that are reasonably calculated to advance the investigation of a known offense provides a clearer rule for officers, and at the same time obviates the need for examining the particular exigencies of each situation 10

CONCLUSION 13

TABLE OF AUTHORITIES

CASES

PAGE

Atwater v. City of Lago Vista,
532 U.S. 318 (2001).....12

Brown v. Texas,
443 U.S. 47 (1979) 11

Burns v. Commonwealth,
541 S.E.2d 872 (2001).....5, 6

California v. Hodari D.,
499 U.S. 621 (1991).....2

City of Indianapolis v. Edmond,
531 U.S. 32 (2000).....*passim*

Florida v. Bostick,
501 U.S. 429 (1991).....8

Florida v. Royer,
460 U.S. 491 (1983).....8

Michigan Dep't of State Police v. Sitz,
496 U.S. 444 (1990).....9

Miranda v. Arizona,
384 U.S. 436 (1966).....7

Terry v. Ohio,
392 U.S. 1 (1966).....7

United States v. Martinez-Fuerte,
428 U.S. 543 (1976).....9

United States v. Mendenhall,
446 U.S. 544 (1980).....8

United States v. Ortiz,
422 U.S. 891 (1975).....9

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STATEMENT OF AMICI INTEREST AND SUMMARY OF ARGUMENT

Ohio and 13 other states urge the Court to grant certiorari and reverse the decision of the Illinois Supreme Court. Ohio and the other state amici, like Illinois itself, serve as guardians of public order within their respective jurisdictions, and accordingly share with Illinois an obvious interest in the question. In a proper case, briefly stopping motorists at a checkpoint provides officers an invaluable tool for gathering information regarding previously-committed offenses. Inappropriate limitations on the use of such checkpoints, like those imposed by the court below, wrongly deny the States access to this vital investigative tool. The question presented also reflects a direct conflict between two

state supreme courts as to the proper scope of this Court's ruling in *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). The uncertainty created by this conflict on such an important constitutional question further frustrates legitimate State law-enforcement efforts.

The question is presented in the context of a case where police officers briefly stopped motorists, including the defendant, at a checkpoint designed to uncover information regarding a fatal hit-and-run accident that occurred at the same location the week before. Pet. App. 2, 23. In connection with their investigation, officers decided to briefly stop eastbound traffic at the former accident site during the approximate time of the day when the accident had occurred. Pet. App. 23. They did so for the sole purpose of distributing flyers seeking information about the accident. Pet. App. 23. They specifically sought information about a Ford Bronco or large pickup truck implicated in the accident. Pet. App. 2. The petitioner asserts the roadblock was "narrowly tailored" to connect with potential witnesses "leaving a regular shift near the hit-and-run who may have seen something valuable." Pet. 2.

One vehicle, that driven by Lidster, almost struck an officer. *Id.* The officer testified that defendant's van "had already been stopped pursuant to the roadblock before nearly striking him." Pet. App. 24.[1] Based on the erratic driving,

[1] Since Lidster's van was already subject to the checkpoint stop at the time of the incident, a "seizure" had occurred inasmuch as Lidster's driving – however imperfectly – evidenced his "submission to the assertion of authority" by the police at the checkpoint. *See California v. Hodari D.*, 499 U.S. 621, 626 (1991).

the officer suspected intoxication. His suspicions were confirmed by sobriety tests that ultimately led to a DUI conviction.

In his criminal case, Lidster challenged the validity of the stop. A deeply divided Illinois Supreme Court upheld his challenge. A bare, 4-3 majority found that *Edmond's* language proscribing suspicionless stops undertaken for "generalized purposes of crime control" extended beyond its original scope to include stops used to investigate previously-committed crimes. Pet. App. 6, 7.

The dissent countered that *Edmond* requires individualized suspicion *solely* when a stop is "justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." Pet. App. 14, citing *Edmond*. Quite simply, the dissent would hold – correctly, in the view of the amici States – that *Edmond*'s teaching only applies where officers set up a checkpoint to "fish" for an offense, and does not cover the situation presented here where officers are pursuing a legitimate, reasonable course of action as part of a pending investigation of a known offense.[2]

The issue is significant for two reasons. First, by incorrectly expanding *Edmond* to include the facts presented here, the Illinois Supreme Court is preventing officers from

[2] The dissenting opinion also pointed to the particular connection between the investigation in this case – a fatal hit-skip accident – and policing the highways: "The canvassing for information about a deadly hit-and-run crime that happened on the roadway would serve the purpose of highway safety in a similar fashion to checking licenses to ensure that only qualified drivers are operating motor vehicles." Pet. App. 16. However, the amici States' position is that the checkpoint is justified not by the particular connection of the offense to motor traffic, but by the reasonable connection of the checkpoint to the pending investigation of a serious offense.

initiating useful, and entirely legitimate, contact with citizens (and potential witnesses) whenever those most likely to have relevant information happen to be either driving, or riding in, an automobile. Second, the reasoning underlying the lower court's holding raises substantial issues about a type of official action this Court explicitly endorsed in *Edmond*: the general stopping of cars along a route a fleeing criminal will likely use to escape. *Edmond*, 531 U.S. at 44.

As to this second point, the lower court's decision is troubling because it fosters uncertainty about which checkpoints are constitutional. If the Illinois Supreme Court is right, then a checkpoint reasonably aimed at catching a fleeing perpetrator would, in the absence of individualized suspicion as to each car stopped, be unconstitutional as a general principle. On the other hand, *Edmond's* language would continue to permit such stops when justified by some additional exigency which case precedent has not yet identified. The *Edmond* decision itself speaks of "some emergency" and a "dangerous" criminal, but furnishes no guidance as to what constitutes an emergency, or how dangerous the criminal must be. By contrast, if officers may generally use a checkpoint during the pending investigation of a particular offense when they have specific reason to believe it will advance the investigation, officers can proceed with greater confidence that they are complying with the Fourth Amendment's mandates.

Both of these governmental interests – the need for open channels of communication between police and the public, and the need for officers to feel they can take action reasonably calculated to advance a pending investigation – possess enhanced significance in an age where our Nation seeks to protect itself not only against the traditional threat of conventional crime, but against international terrorism as well.

REASONS FOR GRANTING THE WRIT

A. Two state supreme courts have split on the question presented, and the issue is both clearly drawn and important enough to merit immediate consideration.

The Illinois Supreme Court decision below squarely conflicts with the Virginia Supreme Court's decision in *Burns v. Commonwealth*, 541 S.E.2d 872 (2001). In *Burns*, the sheriff set up a "traffic-canvassing detail," *i.e.*, a roadblock at a particular location to discover whether witnesses, during those same hours on a previous day, had heard or seen anything relevant to a brutal murder. *Id.* at 879. Just as in the present case, officers stopped all traffic to establish informational contact with citizens, and did so in a manner reasonably calculated to advance the particular investigation. *Id.* at 883. In upholding the stop, the Virginia court drew the same distinction with *Edmond* that the dissent in this case urged. According to the Virginia court, because the roadblock "was specifically designed to investigate a particular [crime] that had recently occurred in the area where the roadblock was placed," and "[l]aw enforcement officers were not stopping vehicles merely to discover evidence of crimes in general," the roadblock did not contravene the Fourth Amendment. *Id.* at 884. Although both of those elements were also present here, the Illinois court reached exactly the opposite conclusion on the Fourth Amendment.[3]

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[3] In a footnote, the Virginia court noted that Burns's statements and physical evidence would also be admissible on the grounds that the connection between the traffic stop and the evidence was dissipated by subsequent acts. 541 S.E.2d at 884 n.11. Despite this passing observation , the Virginia Supreme Court clearly decided and relied upon its Fourth Amendment analysis, which held the roadblock constitutional. Additionally, it is at least arguable that some voluntary statements by Burns to officers constituted "fruits" of the involuntary traffic stop. The

The split among courts regarding *Edmond*'s reach is understandable. On the one hand, *Edmond* uses the phrases "general interest in crime control" and "ordinary enterprise of investigating crimes," which might be accorded the breadth with which the Illinois Supreme Court invested them here. On the other, *Edmond* was expressly directed toward the considerably narrower situation of "stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." 531 U.S. at 44. That latter phrase describes the facts actually presented in *Edmond* with greater precision. Because of *Edmond's* language, a widening rift among the lower courts can be expected until this Court furnishes additional clarification.

The amici States also submit that this is not a proper case for the Court to defer consideration of the issue until a greater number of lower courts have addressed it. First, there is no reason here to think that additional pronouncements by lower courts will bring greater focus and clarity to the issue. This case and *Burns* define fundamentally differing standards by which to judge the use of checkpoints during investigation of a known offense. Either *Edmond* does not reach such stops, in which case their reasonableness depends upon their rational relationship to the pending investigation; or *Edmond* requires the checkpoint be presumed unconstitutional subject to an examination of particular exigencies in the individual case. Further decisions will not clarify the character of these differing standards.

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very brevity of the suppression analysis counsels against viewing it as rendering the Fourth Amendment ruling superfluous to the outcome of the case.

Second, deferring the question until a later date perpetuates uncertainty among law enforcement policymakers, who would be left to guess at whether or not they can conduct such checkpoints, and who must worry whether the exigencies presented in a particular situation will be found to justify their actions. Society's interest in law enforcement would be better served by clear guidance from this Court resolving the split below.

B. Extending *Edmond* to cover checkpoints reasonably tailored to advance the investigation of a known offense needlessly constricts officers' opportunity to obtain valuable information from drivers and their passengers.

The Court has long recognized the affirmative value of informational contact between officers and the public outside the formal context of detention and interrogation. "There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets." *Terry v. Ohio*, 392 U.S. 1, 34 (1966) (concurring opinion of White, J.). Accordingly, the Court in *Miranda v. Arizona*, 384 U.S. 436 (1966), endorsed the police practice of "seek[ing] out evidence in the field to be used at trial against" a criminal defendant, opining that "[s]uch investigation may include inquiry of persons not under restraint" and "[g]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process." 384 U.S. at 477-78. Giving officers the information they request constitutes an "act of responsible citizenship." *Id.*

Usually, a checkpoint is viewed from the perspective of its intrusion on the motorist's convenience. But a checkpoint where officers seek the motorist's assistance has another important aspect: it cements the police-citizen alliance against crime, and could in some cases actually

engender positive feelings in the motorist. Proponents of community policing have recognized that, where police and public engage in informational contact, "citizens like to talk to a police officer," in part because "[s]uch exchanges give them a sense of importance." J. Wilson & G. Kelling, "Broken Windows," The Atlantic Monthly, March 1982, at 29, 34. At the same time, the automobile imposes inherent obstacles to such contacts. Wilson and Kelling's famous and influential article points to the problem of officers patrolling in cars, and suggests that foot patrols may be better at fostering contact. The circumstances here present the converse: the officer tries to contact a citizen who is driving or riding in a car, and this forces her to stop the motorist to initiate contact.

In the pedestrian context, several Justices of this Court have opined that "law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions." *Florida v. Royer*, 460 U.S. 491, 497 (1983) (plurality opinion by Justice White, joined inter alia by current Justice Stevens); *see also United States v. Mendenhall*, 446 U.S. 544, 555 (1980) (opinion of Stewart, J., joined by current Chief Justice Rehnquist) ("The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals' [internal citation omitted]."). The beneficial nature of informational contacts between police and public is part of the reason why the Court has declined to subject all police questioning to Fourth Amendment scrutiny. *See Florida v. Bostick*, 501 U.S. 429, 434 (1991) (holding that "seizure does not occur simply because a police officer approaches an individual and

asks a few questions. So long as a reasonable person would be free to 'disregard the police and go about his business,' [internal citation omitted], the encounter is consensual and no reasonable suspicion is required.").

By contrast, highway safety does not permit such an *ad hoc* method of contacting drivers or their passengers. Thus, where motorists are most likely to possess information relevant to an investigation, a stop becomes unavoidable – and stopping a motorist unquestionably constitutes a Fourth Amendment "seizure," because it imposes a sufficient restraint to trigger Fourth Amendment scrutiny. *See United States v. Martinez-Fuerte*, 428 U.S. 543, 556 (1976); *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 450 (1990); *Edmond*, 531 U.S. at 40. Yet the seizure results solely from an exigency inherent in motor traffic; it does not, in the context of an informational checkpoint, manifest adversarial action by officers.

While a checkpoint inevitably imposes a Fourth Amendment seizure, the Court has recognized the minimally intrusive nature of a brief traffic stop where other motorists are subject to the same treatment, calling it "slight," *Sitz*, 496 U.S. at 451, and noting that "[o]ne's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence," *Martinez-Fuerte*, 428 U.S. at 561. Indeed, checkpoint stops are not subject to the problems that arise in other motor vehicle stops. As distinct from roving patrols, checkpoints reassure the motorist who "see[s] that other vehicles are being stopped," witnesses "visible signs of the officers' authority," and accordingly becomes "much less likely to be frightened or annoyed by the intrusion." *Id.* at 558, citing *United States v. Ortiz*, 422 U.S. 891, 894-95 (1975).

Because a seizure, however slight, has occurred, courts must determine whether the seizure is "reasonable." The open issue, post *Edmond*, is whether reasonableness in a case like the present one requires individualized suspicion of a particular driver, passenger or vehicle. The amici States respectfully submit that the important law enforcement interest in initiating informational contact outweighs the modest intrusion of a brief checkpoint stop. *Edmond* should accordingly be read to forbid only those checkpoints, like that presented in *Edmond* itself, whose purpose emanates from "the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." 531 U.S. at 44.

C. A rule that generally permits checkpoints that are reasonably calculated to advance the investigation of a known offense provides a clearer rule for officers, and at the same time obviates the need for examining the particular exigencies of each situation.

In *Edmond*, the Court acknowledged "circumstances that may justify a law enforcement checkpoint where the primary purpose would otherwise, but for some emergency, relate to ordinary crime control." 531 U.S. at 44. One such circumstance, according to the Court, would involve efforts to "catch a dangerous criminal who is likely to flee by way of a particular route." *Id.*

Under the lower court's reading of *Edmond* here, the general rule is that officers cannot use a checkpoint to investigate a known offense without individualized suspicion of each motorist who is stopped. While the lower court did not confront the question of stopping cars to detect a fleeing criminal, its holding would require additional Fourth Amendment analysis in order to sustain such a checkpoint. Either a special rule governs fleeing criminals, or some

particular type of exigency justifies those stops. The Court in *Edmond* did use the term "emergency," and referred to a "dangerous" criminal, but the *Edmond* opinion offers no further clarification.

The present case affords the opportunity to create clarity and certainty in this area. Under the States' submission, the checkpoint designed to "catch a dangerous criminal who is likely to flee by way of a particular route" would lie outside the holding of *Edmond*, and would be subject to review under the reasonableness standard of *Brown v. Texas*, 443 U.S. 47 (1979). That result would obviate the need for a particularized inquiry into the exigencies of each such situation.

Indeed, this case shows that requiring such exigencies to justify an informational checkpoint ill serves the Fourth Amendment balance between societal concerns and individual liberty. The Illinois Supreme Court in this case brushed aside the contention that the stop here reflected an exigency by stating "[t]here was no indication that the motorist involved posed any further danter to local residents or, indeed, that the motorist remained in the vicinity," and further noted the absence of evidence of reckless operation or drunk driving. Pet. App. 9-10. Yet the search for such exigencies ought to be irrelevant here precisely because an informational checkpoint seeks not only evidence that identifies a perpetrator, but also the very facts which indicate the importance of the investigation. A passing motorist who witnessed the crash that occurred one week earlier might inform officers that they observed reckless operation, apparent drunk driving, or even willful misconduct. On the other hand, witnesses might have information that indicates nothing more than ordinary negligence. Similarly, passing motorists might have seen the same person or vehicle involved in the crash on different occasions near the same location – indicating an ongoing threat to the community. If

police are not free to pursue informational contact with those citizens, they cannot assess the degree of threat that the wrongful conduct poses to the community. Accordingly, to require a known exigency in order to justify an informational checkpoint reverses the proper Fourth Amendment logic.

Even in the context of the greater intrusion of full custodial arrest, the Court has noted "the object of implementing" the Fourth Amendment "is to draw standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and even years after an arrest or search is made." *Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001). This case presents the Court the opportunity to fashion desperately needed "clear and simple" standards for Fourth Amendment analysis of checkpoints.

The amici States respectfully submit that the approach of the dissent in this case, not the majority below, offers the best balance and the most readily administrable rule.

CONCLUSION

For all the foregoing reasons, the writ of certiorari should be granted and the decision of the Illinois Supreme Court should be reversed.

Respectfully submitted,

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